

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BODUM USA, INC., a Delaware corporation

Plaintiff,

-against-

EUROPEAN GIFT & HOUSEWARE, a New  
York company,

Defendant.

Case No. 07 CV 7456 (RMB)

**ANSWER TO COUNTERCLAIM**

Plaintiff, Bodum USA, Inc. (“Bodum”), by its undersigned attorneys, and for its answer to Defendant European Gift & Houseware’s (“EG&H”) Counterclaim, states as follows:

1. Bodum admits the allegations of Paragraph No. 1.
2. Bodum admits on information that EG&H has an office at 514 South 5th Avenue, Mt. Vernon, New York 10550. Bodum is without sufficient knowledge or information to form a belief as to whether EG&H is a corporation of New York. Bodum denies all remaining allegations in this paragraph.
3. Bodum admits the allegations of Paragraph No. 3.
4. Bodum admits the allegations of Paragraph No. 4.
5. Bodum admits the allegations of Paragraph No. 5.
6. Bodum denies that the design of the coffee maker as shown in EX. A is “generic.” Bodum is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph No. 6.
7. Bodum denies that the design of the coffee maker is “generic.” Bodum is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph No. 7.
8. Bodum denies that the design of the coffee maker is “generic.” Bodum is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph No. 8.
9. Bodum admits that on or about August 25, 2000, Bodum sent the letter to EG&H that is attached at Exhibit B to the Counterclaim. Bodum denies the allegations in this paragraph that are different from, contrary to, or seek to draw legal or factual conclusions from the terms of the letter. Bodum denies all remaining allegations in this paragraph.

10. Bodum admits that on or about September 15, 2000, EG&H sent the letter to Bodum that is attached as Exhibit C to the Counterclaim. Bodum denies the allegations in this paragraph that are different from, contrary to, or seek to draw legal or factual conclusions from the terms of the letter. Bodum denies all remaining allegations in this paragraph.

11. Bodum denies the allegations of Paragraph No. 11.

12. Bodum incorporates by reference its answers to Paragraphs 1 through 11.

13. Bodum admits that it is seeking, *inter alia*, to prohibit EG&H from advertising, promoting, marketing and selling coffee makers and related products utilizing the Bodum CHAMBORD® Trade Dress, and damages for past infringement. Bodum denies that it has alleges that it has “trade dress rights in the generic shape of a coffee maker.” Bodum denies all remaining allegations in this paragraph.

14. Bodum denies the allegations of Paragraph No. 14.

15. Bodum denies the allegations of Paragraph No. 15.

16. Bodum denies the allegations of Paragraph No. 16.

#### **AFFIRMATIVE DEFENSES**

Without prejudice to its denials of the allegations in EG&H’s Counterclaim, without waiver of Plaintiff’s obligation to prove each and every element of its claims, and pleading in the alternative, Bodum propounds the following affirmative defense:

##### **First Affirmative Defense**

EG&H claims are barred by the doctrines of unclean hands because EG&H engaged in trade dress infringement, unfair competition under the laws of New York, and violation of the New York Consumer Protection from Deceptive Acts and Practices, as set forth more fully in the Bodum’s Complaint, the allegation of which are incorporated herein by reference.

BODUM USA, INC.

By: s/John H. Eickemeyer

John H. Eickemeyer

Marie A. Tieri

Vedder, Price, Kaufman & Kammholz, P.C.

1633 Broadway, 47th Floor

New York, New York 10019

Telephone: (212) 407-7700

Facsimile: (212) 407-7799

OF COUNSEL

David E. Bennett  
Chad A. Schiefelbein  
Jared C. Jodrey  
Vedder, Price, Kaufman & Kammholz, P.C.  
222 North LaSalle Street, Suite 2600  
Chicago, Illinois 60601-1003  
Telephone: (312) 609-7500  
Facsimile: (312) 609-5005